

**Memorandum  
Office of Jenine Windeshausen  
Treasurer-Tax Collector**



---

**To:** The Board of Supervisors  
**From:** Jenine Windeshausen, Treasurer-Tax Collector  
**Date:** October 25, 2016  
**Subject:** mPOWER Program

---

**Action Requested:**

- 1) Adopt a resolution authorizing the Sierra Valley Energy Authority to accept applications from property owners, to conduct contractual assessment proceedings, to levy contractual assessments and to provide financing within the unincorporated territory of Placer County, and approving the Administrative Services Agreement and authorizing related actions.
- 2) Approve the Program Management Agreement between Placer County and the Sierra Valley Energy Authority whereby Placer County will provide the administrative and financial functions of operating the mPOWER Program to the Sierra Valley Energy Authority, and authorize the County Executive to execute the Agreement.
- 3) Approve a contract with Jones Hall for legal and bond counsel services related to the formation of the mPOWER program under the Sierra Valley Energy Authority, and the issuance of bonds by the Sierra Valley Energy Authority, and authorize the County Executive to sign the contract.

**Background:**

On August 18, 2015, your Board approved a Joint Exercise of Powers Agreement (JPA) for the formation of the Sierra Valley Energy Authority (SVEA). The County and the City of Colfax are the voting members of the SVEA. The SVEA was formed as a mechanism for the mPOWER Program to expand to other jurisdictions and to facilitate the issuance of bonds to finance the contractual assessments.

Since the County approved the SVEA JPA agreement, the City of Colfax has approved the agreement, and the SVEA has had its first meeting to approve organizational matters and commence proceedings related to the formation of the mPOWER Program. Other jurisdictions may join the SVEA as non-voting members for the purpose of authorizing the mPOWER program to accept applications and enter in to contractual assessments for the purpose of financing energy efficiency, renewable generation and water conservation improvements on private property. Nevada County, Grass Valley and the Town of Truckee have authorized the mPOWER Program by adopting a resolution and entering into an Administrative Services Agreement for the provision of the mPOWER Program.. Although Placer County is a voting member of the SVEA, it must also adopt a resolution authorizing the acceptance of applications and entering into contractual assessments for the unincorporated area of the County.

The SVEA is anticipated to have a meeting in early November to approve non-voting associate members and establish the initial territory of the SVEA and authorize the issuance of bonds. The County will continue to administer the mPOWER Program on

behalf of the SVEA. The attached Program Management Agreement provides for the terms of administering the mPOWER Program. The County will provide all necessary staff and consultants and other administrative resources necessary to operate the mPOWER Program. The SVEA will not directly compensate the County for the mPOWER Services, however all mPOWER Program revenues will accrue to the County.

Due to the arrangement between the County and the SVEA for the provision of the mPOWER Program and the issuance of bonds, the contract for legal services is between the County, the SVEA and bond counsel Jones Hall. The Bond counsel services include formation of the SVEA JPA, formation of the mPOWER Program (including judicial validation), initial financing purchased by the Treasury and take-out financing purchased by third-party investors. This contract is for an amount not to exceed \$217,000. Due to the ongoing issuance of bonds, this contract is expected to extend and be encumbered into the next fiscal year.

**Fiscal Impact:**

The mPOWER Program is operated out of an enterprise fund. The SVEA JPA limits the liability to the JPA and not its members. The mPOWER Program generates revenues that offset program costs.

Attachments: Resolution  
Administrative Services Agreement  
Program Management Agreement  
Jones Hall Contract

**Before the Board of Supervisors  
County of Placer, State of California**

**Resolution No:** \_\_\_\_\_

**In the matter of:** A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, STATE OF CALIFORNIA, AUTHORIZING THE SIERRA VALLEY ENERGY AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS, LEVY CONTRACTUAL ASSESSMENTS AND PROVIDE FINANCING WITHIN THE UNINCORPORATED TERRITORY OF THE COUNTY OF PLACER; AND AUTHORIZING RELATED ACTIONS

**Ayes:**

**Noes:**

**Absent:**

Signed and approved by me after its passage. \_\_\_\_\_  
Chairman, Board of Supervisors

Attest:  
Clerk of said Board

\_\_\_\_\_  
**WHEREAS**, the Sierra Valley Energy Authority ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and operating under the Joint Exercise of Powers Agreement for the Sierra Valley Energy Authority effective on September 9, 2015, as amended from time to time (the "Authority Agreement"); and

**WHEREAS**, the Authority was established by the County of Placer ("County of Placer") and the City of Colfax ("City of Colfax") and the County of Placer and the City of Colfax are referred to as the "Regular Members" in the Authority Agreement.

**WHEREAS**, Chapter 29 of The Improvement Act of 1911, being Division 7 of the California Streets and Highways Code (as amended from time to time, "Chapter 29") authorizes the contractual assessment financing of certain improvements (as enumerated from time to time in Chapter 29, "Improvements"); and

**WHEREAS**, Authority has established the mPOWER Program to provide for the financing of Improvements pursuant to Chapter 29 within counties and cities in the State of California that elect to participate in mPOWER Program; and

**WHEREAS**, the County of Placer (the "Local Agency") believes that the financing of Improvements by the Authority for properties participating in the mPOWER Program within its boundaries would accomplish a public purpose; and

**WHEREAS**, Local Agency wishes to authorize the Authority to undertake the mPOWER Program within its boundaries as described in this Resolution; and

**WHEREAS**, Local Agency will not be responsible for the conduct of any proceedings required to be taken under Chapter 29; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the mPOWER Program.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Board of Supervisors of the County of Placer finds and declares that properties within Local Agency's jurisdiction will benefit from the availability of the mPOWER Program to conduct contractual assessment proceedings and finance the installation of Improvements pursuant to Chapter 29.
2. The Board of Supervisors consents to Authority undertaking contractual assessment proceedings under Chapter 29 for all of the properties within Local Agency's jurisdictional area and to the contractual assessment financing of Improvements by Authority, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to the Authority's mPOWER Program, and to the assumption of jurisdiction there over by Authority for the purposes thereof.
3. This Resolution constitutes assent to the assumption of jurisdiction by Authority for all purposes of the mPOWER Program and authorizes Authority to take each and every step required for it to provide contractual assessment financing for the Improvements, including the levying, collecting and enforcement of contractual assessments to finance the Improvements and the issuance and enforcement of bonds and other financing instruments to represent and be secured by such contractual assessments.
4. The Board of Supervisors hereby approves the Administrative Services Agreement and authorizes and directs staff to coordinate with Authority staff to facilitate operation of the mPOWER Program within the jurisdiction of the Local Agency, and report back periodically to the Board of Supervisors on the success of such program.

5. The Board of Supervisors hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).
6. This Resolution shall take effect immediately upon its adoption. The Clerk of the Board is directed to send a certified copy of this resolution to the Secretary of the Governing Board of the Authority.

**SIERRA VALLEY ENERGY AUTHORITY**

**AND**

**PLACER COUNTY**

**ADMINISTRATIVE SERVICES AGREEMENT  
AB 811 PROPERTY ASSESSED CLEAN ENERGY PROGRAM**

**THIS AGREEMENT** ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2016 by and between the County of Placer, hereinafter referred to as "County", and the Sierra Valley Energy Authority, hereinafter referred to as "the Authority", as the entity delivering the mPOWER Program, a Property Assessed Clean Energy (PACE) financing Program, utilizing the California Assembly Bill 811 (Levine, 2008; CA Streets and Highways Code Section 5898.10-5899.3), as amended and may be subsequently amended ("AB 811").

**RECITALS**

**WHEREAS**, PACE financing is a method of providing financing to property owners for energy efficiency, water conservation and renewable energy generation improvements (the Eligible Improvements") which are permanently affixed to real property, and whereby the property owner repays the PACE financing by entering into a voluntary contractual assessment resulting in a property tax lien which specifies the annual amount to be added to the property tax bill for repayment;

**WHEREAS**, the Sierra Valley Energy Authority is a joint exercise of powers authority that has established the mPOWER (money for Property Owner Energy Retrofits) Program, a PACE financing program to provide financing for Eligible Improvements to property owners who have voluntarily agreed to participate in the mPOWER Program;

**WHEREAS**, the Authority administers and operates the mPOWER Program and therefore is responsible for conducting assessment proceedings, accepting applications, determining property owner eligibility, entering into contractual assessments, preparing and administering the assessment levies, including collection of delinquent assessments, and other PACE program responsibilities;

**WHEREAS**, the County desires to promote a PACE program in the County in order to provide more financing choices for residents and businesses to reduce the upfront costs associated with energy efficiency, renewable energy generation and water conservation projects that are affixed to real property and proposed by property owners;

**WHEREAS**, the County desires to participate in the mPOWER Program to promote widespread retrofits in accordance with Government Code Section 53313.5, thereby reducing greenhouse gas emissions, promoting energy efficiency, and improving water conservation while stimulating economic opportunities;

**WHEREAS**, the purpose of this Agreement is to set forth the mutual understandings, terms and conditions related to Authority operating in the County.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

**AGREEMENT**

**1. DEFINITIONS**

- A. **“Authority”** means the Sierra Valley Energy Authority delivering PACE Financing within the County.
- B. **“Eligible Improvement”** means a renewable energy generation, energy efficiency, water conservation or other improvement authorized by AB 811 or other state law pertaining to contractual assessments which shall be further specified in the Authority Program Report and mPOWER Program Manual.
- C. **“mPOWER Program”** means the PACE Program provided by the Authority.
- D. **“Non-Residential”** means all property except Residential.
- E. **“PACE Financing”** means financing Eligible Improvements which are repaid through contractual assessments, utilizing the provisions of AB 811.
- F. **“Participating Contractor”** means any licensed contractor performing work in the County who has agreed to, and abides by, the terms and conditions of the Authority’s contractor standards.
- G. **“Participating Property Owner”** means a property owner who has executed a Voluntary Contractual Assessment Agreement.
- H. **“Program Report”** means the Program Report adopted by the Authority as required by AB 811.
- I. **“Residential”** means properties with three or fewer housing units.
- J. **“Value”** means the greater of assessed value or fair market value as determined by the County Assessor, an automated valuation model or independent appraisal.
- K. **“Voluntary Contractual Assessment Agreement”** means the legal instrument which a Participating Property Owner voluntarily executes to obtain mPOWER Financing and which is filed with the County Recorder as an assessment lien secured by the subject property.

**2. PERFORMANCE REQUIREMENTS**

- A. Authority’s Specified Services. The Authority will offer and provide PACE Financing under the authorization of AB 811 within the unincorporated boundaries of the County. The Authority is solely responsible for the formation, operation, administration and marketing of the mPOWER

Program, including the conduct of any assessment proceedings, the levy and collection of assessments, and the offer, sale and administration of any bond issued by the Authority on behalf of the mPOWER Program.

- B. Cooperation with County. Authority shall independently operate its program and cooperate with the County and County staff as described in this Agreement.
- C. Performance Standard. Authority shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization providing PACE Financing pursuant to AB 811. County has relied upon the professional ability and expertise of Authority as a material inducement to enter into this Agreement. Authority hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it is understood that acceptance of Authority's work by County shall not operate as a waiver or release. If County determines that any of Authority's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Authority to discuss with County to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section VI, Termination; or (c) pursue any and all other remedies at law or in equity.
- D. Applicant Disclosure Requirements.

The Authority shall:

1. Disclosure in writing to program applicants the risks associated with PACE Financing, including the risks associated with federal regulation and administration of mortgage financing and the Federal Housing Finance Agency Statements related to PACE Financing. The written disclosure must be signed by the applicant acknowledging the Federal Housing Finance Agency statements and potential consequences regarding PACE.
2. Provide disclosures to property owners consistent with the Dodd Frank TILA-RESPA Integrated Disclosure Rule (Truth in Lending Act and Real Estate Settlement Procedures Act) (TRID) specific to the amount of financing and utilizing the same methodologies for calculating rates and amounts, and provide for three day right of rescission after execution of the Voluntary Contractual Assessment Agreement.
3. Require Property Owners on Non-Residential Projects to obtain signed Lender Acknowledgement or Consent before entering into a voluntary contractual assessment agreement from any lender who holds a lien against the property where the subject property is collateral.
4. Require Property Owners to attend an educational seminar prior to financing approval.
5. Require that Building Permits and/or any other required Permits are obtained and finalized for all improvements where such permit or inspection is usually and customarily required and not exclusive to improvements made with PACE financing.
6. Determine applicability of the California Environmental Quality Act ("CEQA") and notify County related to improvements requiring actions related to CEQA.

7. Have a process to ensure property owner satisfaction with work completed prior to distribution of project payments.
8. Provide information on available rebates and incentives (for all utility and generation types) to optimize the use of such rebates to reduce costs to Property Owners.
9. Provide information to each applicant on the benefits of implementing efficiency measures before installation of energy generation improvements.
10. Provide information regarding the benefits of an energy analysis and a whole building approach to energy efficiency, water conservation and renewable generation projects.

E. Tax Advice. Ensure all marketing, information materials conform to all applicable tax laws. Recommend that property owners consult with a tax professional for information about the deductibility of the PACE financing before claiming any tax benefits associated with mPOWER financing.

F. Financial Policies.

The Authority shall:

1. Participate in the State of California's PACE Loss Reserve Program Administered by the California Alternative Energy and Advanced Transportation Finance Authority (CAEATFA), and shall provide evidence of current participation and copies of all reports submitted to CAEATFA. If the State discontinues the PACE Loss Reserve Program, or if the County determines that the State's PACE Loss Reserve Program does not provide adequate coverage, then the County may terminate this Agreement unless the County is satisfied with coverage by an alternative loan loss reserve program.
2. Administer and review mPOWER program applications to determine eligibility consistent with the Authority's Program Report.
3. Establish its interest rates, payback terms, fees, and amount to be financed consistent with applicable laws and regulations.
4. Notify the County of any involuntary legal action related to collection of a PACE assessment regarding any property with a PACE assessment placed in the County.
5. Notify County of any regulatory changes that may impact the PACE program.

G. Documents, Data, and Information. The Authority will provide periodic reports to County regarding PACE Financing activities in the County, including upon request, periodic reports to the Board of Supervisors. The Authority will share project information and data in an accessible electronic format with the County on at least a semi-annual and annual basis, or upon request, including but not limited to the following:

1. Assessor's Parcel Number (APN) of the property
2. Residential or Non-Residential property type designation
3. Dollar amount financed (total amount of the assessment)
4. List of Eligible Improvements financed, including the unit of measure for the improvement and the quantity installed
5. Listing of all generation improvements installed and the solar STC-DC rating in watts or kilowatts and estimated financial savings

6. Amount of rebate or incentive dollars associated with the project (not financed)
7. Estimated building size in square feet for Non-Residential (if available)
8. Year of construction of the building
9. Whether the project was completed by a local contractor whose primary location(s) or headquarters are located in Placer County.

H. Inspections. Upon County's request, County or its designee shall have the right at reasonable times and intervals to inspect, at Authority's premises, Authority's financial and program records. Authority shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon County's request at County's expense.

I. Participating Contractor Standards. Authority shall insure that Participating Contractors agree to and abide by the terms and conditions of the Participating Contractors' standards outlined below.

1. Require that Participating Contractors have the appropriate license(s) issued by the California Contractors State License Board.\*
2. Require that Participating Contractors' bond is in good standing.\*
3. Require that Participating Contractors have Workers' Compensation insurance coverage.\*
4. Require that Participating Contractors shall make reasonable claims about performance and or savings associated with projects.
5. Participating Contractors and their representatives, employees, and agents shall not represent themselves as agents, representatives, contractors, subcontractors, or employees of the County, or claim association or affiliation with the County.
6. Require Contractors attend an educational seminar provided through the PACE program, prior to becoming Participating Contractors.
7. Participating Contractors shall hold harmless, indemnify and defend the County as substantially set forth in Exhibit A.

\*As determined and reported by the California State Contractors License Board.

J. Authority Standards. Authority shall NOT do any of the following:

1. Endorse, recommend, or refer any specific contractor.
2. Make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor.
3. Make any warranty regarding the contractor's work or products purchased from contractors provided.

K. Environmental Credits And Benefits. Authority will use best efforts to track all improvements in a manner that anticipates such improvements may derive renewable energy credits or other environmental benefit. The parties hereby agree that any credits or other environmental benefits attributable to the Eligible Improvements financed by the mPOWER Program under this Agreement will be allocated 100% to the County.

- L. Coordination with County Auditor-Controller. The Authority will consult and coordinate with the County Auditor regarding the levy and administration of Voluntary Contractual Assessments on the property tax roll

### **3. COMPENSATION**

The parties hereto understand and agree that the County shall incur no cost or expense relating to the administration or implementation of the mPOWER Program under this Agreement. The Authority is solely responsible and liable for all costs and expenses associated with the administration, implementation and marketing of the mPOWER Program under this Agreement. No compensation shall be due or payable.

### **4. INDEPENDENT CONTRACTOR**

- A. It is understood and agreed that Authority (including Authority's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Authority shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance.
- B. Authority's personnel shall not be entitled to any benefits payable to employees of County.
- C. County is not required to make any deductions or withholdings from the compensation payable to Authority's personnel, and is not required to issue W-2 Forms for income and employment tax purposes for any of Authority's personnel.
- D. Any contractors or third persons employed by Authority shall be entirely and exclusively under the direction, supervision, and control of the Authority.
- E. Authority hereby protects, defends, indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement. In the event Authority or any of its employees, agents, or subcontractors providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the County, Authority shall further indemnify, protect, defend, and hold harmless the County for the payment of any employee and/or employer contributions for PERS benefits on behalf of Authority or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

### **5. CONFLICT OF INTEREST**

Authority and Authority's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement, provided, however, that salary, equity ownership and other compensation paid to any employee, officer, director, agent, consultant or independent contractor by Authority shall be excluded from the prohibitions described above in this Section XIV.

## **6. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING**

- A. Authority shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, and all other appropriate governmental agencies, including any certification and credentials required by the County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County.
- B. Authority further certifies to County that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State, County or local government contracts. Authority certifies that it shall not contract with a Contractor that is so debarred or suspended.

## **7. INSURANCE AND INDEMNIFICATION**

Without limiting Authority's indemnification, Authority shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit A. It is the responsibility of Authority's to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit A. Failure to maintain insurance as required in this Agreement may be grounds for material breach of contract.

Authority shall indemnify County pursuant to this Agreement as specified in Exhibit A. Authority shall also require Participating Contractors to provide indemnification to County as specified in Exhibit A.

## **8. RELEASE OF LIABILITY**

Each Participating Property Owner shall be required to execute a release of liability as specified in Exhibit B.

## **9. LOBBYING AND UNION ORGANIZATION ACTIVITIES**

Authority shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations. If services under this Agreement are funded with state funds granted to County, Authority shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

## **10. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. Authority agrees and assures County that Authority and any subcontractors shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of County, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability.
- B. Authority shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of County employees and agents, and recipients of services are free

from such discrimination and harassment. Authority represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.

- C. Authority agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.
- D. Authority shall include this nondiscrimination provision in all subcontracts related to this Agreement.

## 11. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

**TO County:**  
County of Placer  
c/o County Counsel  
175 Fulweiler Avenue, #206  
Auburn, CA 95603

530-889-4000

**TO Authority:**  
Sierra Valley Energy Authority  
c/o Placer County Treasurer  
2976 Richardson Drive  
Auburn, CA 95650

530-889-4140

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

## 12. TERMINATION

- A. Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County or Authority shall have the right, in its sole discretion, to terminate this Agreement by giving 90 days written notice to the other Party of this Agreement.
- B. Termination for Cause. Notwithstanding any other provision of this Agreement, should the Authority fail to uphold any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Authority written notice of such termination, stating the reason for termination.
- C. Contravention by Federal Housing Finance Agency. Authority will immediately, upon 24 hours' notice from the County, discontinue its residential program in the County, as it relates to Fannie Mae and Freddie Mac mortgages, in the event the FHFA takes any action in California related to PACE Programs which the County interprets as creating an undue liability to the County or an unreasonable threat to its property owners and citizens, including both program participants and non-participants. In the event of such notice, Authority shall a) provide financing for all applications which have been given approval, unless found to be in direct violation of Federal

laws or regulations; 2) suspend processing all applications that have not yet received approval, 3) cease accepting new applications.

- D. Delivery of Data and Information upon Termination. In the event of termination, Authority, within 30 days following the date of termination, shall deliver to County a final report containing the information specified in Section II. G. Document, Data, and Information.
- E. Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Executive Officer, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.
- F. Effect of Termination. In the event of termination pursuant to this Section VI, Authority shall provide financing for all applications which have been given approval, unless found to be in direct violation of Federal laws or regulations, and shall suspend processing all applications that have not yet received approval, and shall not solicit new assessments contracts within the County; provided however, nothing in this Section VI shall prohibit Authority from continuing to administer any assessment contracts outstanding as of the termination date.

### **13. FORCE MAJEURE**

Neither Authority nor County shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

### **14. CONSTRUCTION AND COMPLIANCE WITH LAWS**

Authority shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. The Authority and the County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

### **15. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

#### **16. CAPTIONS**

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

#### **17. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

#### **18. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon County unless agreed in writing by the County.

#### **19. PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between County and Authority regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between County and Authority regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

#### **20. ASSIGNMENT, DELEGATION AND SUCCESSORS**

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. This Agreement shall bind the heirs, successors, assigns and representatives of County and Authority in the same manner as if they were expressly named.

#### **21. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, Authority shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or

provision shall constitute a waiver of any of the government claim filing requirements set forth in the California Government Code or as otherwise set forth in local, state and federal law.

## **22. TIME**

Time is and shall be of the essence of this Agreement and every provision hereof.

## **23. SURVIVAL OF TERMS**

All services performed provided pursuant to this Agreement are subject to all of the terms and conditions set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

## **24. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

## **25. ENTIRE AGREEMENT**

This Agreement contains all of the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Agreement will be deemed to exist or to bind any of the parties hereto.

## **26. AUTHORITY TO EXECUTE**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

---

County of Placer

Sierra Valley Energy Authority

Date \_\_\_\_\_

Date \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT A**

### **INSURANCE AND INDEMNITY**

#### **1. INSURANCE:**

##### **A. Commercial General Liability Insurance:**

The Authority will procure insurance through a commercial insurance company, or by participation in a joint powers agency, or self-insure for all or any portion of its obligations under this section. Authority shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- (i) Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount of \$2,000,000;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Agreement;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County shall be excess only and not contributing with Authority's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days' notice for non-payment of premium).

##### **B. Automobile Liability Insurance:**

For each vehicle used in connection with fulfillment of the obligations under this Agreement including non-owned and hired automobiles, Authority shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following provisions:

- (i) Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount of \$2,000,000;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the services provided or the relationships created under this Agreement;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County shall be excess only and not contributing with Authority's insurance;

- (iv) A provision that said insurance shall provide for thirty (30) days written notice to the County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days' notice for non-payment of premium).

**C. Worker's Compensation:**

Authority shall maintain a worker's compensation policy as required by law, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to the County.

Before commencing to utilize employees in providing services under this Agreement, Authority warrants that it will comply with the provisions of the California Labor Code, requiring Authority to be insured for worker's compensation liability or to undertake a program of self-insurance therefor.

**D. Miscellaneous Insurance Provisions:**

All policies of insurance required by this Agreement shall remain in full force and effect throughout the life of this Agreement and shall be payable on a "per occurrence" basis unless the County specifically consents to "claims made" coverage. If the County does consent to "claims made" coverage and if Authority changes insurance carriers during the term of this Agreement or any extensions hereof, then Authority shall carry prior acts coverage.

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County, its officers, agents and/or employees, shall be excess only and not contributing with insurance required or provided under this Agreement.

At all times, Authority shall keep and maintain in full force and effect throughout the duration of this Agreement, policies of insurance required by this Agreement. Policies procured from commercial insurance companies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County's Risk Manager. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Authority shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph.

If Authority fails to provide and maintain self-insurance through participation in a joint powers agency or insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Agreement, then the County shall have the right, in its sole discretion, to secure such policies on behalf of Authority and to charge and collect the cost of said policies from Authority.

**2. INDEMNIFICATION BY AUTHORITY**

Authority shall defend, indemnify and hold County and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, in connection with the mPOWER

Program administered under this Agreement, including without limitation the payment of expert witness fees and attorney's' fees and other related costs and expenses, provided that the Authority shall not be required to indemnify the County and its directors, officials, officers, employees and agents for County's sole negligence or willful misconduct.

In no event shall any of Authority's Regular or Associate Members or their officials, officers or employees be held individually liable for any damages or liability resulting out of this Authority Agreement Amendment.

### **3. INDEMNIFICATION BY PARTICIPATING CONTRACTORS**

The Authority shall require each Participating Contractor to release, defend, indemnify, protect, save, and hold harmless the County, their employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns, from any and all liability, claims, losses, costs, expenses, penalties, fines, forfeitures, judgments and damages, including attorney's fees and costs, arising out of or connected with the Participating Contractor's actions under the mPOWER Program, including the installation of any Eligible Improvements.

## EXHIBIT B

### PROPERTY OWNER RELEASE OF LIABILITY

The Authority agrees to have the following release of liability language or substantially similar release of liability language executed by each Participating Property Owner:

Waivers, Acknowledgment and Agreement. Because this Agreement reflects the Property Owner's free and willing consent to pay the Assessment following a noticed public hearing, the Property Owner hereby waives any otherwise applicable requirements of Article XIII D of the California Constitution or any other provision of California law for an engineer's report, notice, public hearing, protest or ballot.

The Property Owner hereby waives its right to repeal the Assessment by initiative or any other action, or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the Authority undertaken in connection with the mPOWER Program. The Property Owner hereby agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation and maintenance of the Improvements. The Property Owner hereby represents that the Improvements are intended to be permanently fixed to the Property and the Property Owner covenants not to remove the Improvements for use on any other property. The Property Owner hereby acknowledges that the Property Owner will be responsible for payment of the Assessment regardless of whether the Improvements are properly installed, operated or maintained as expected.

The Property Owner hereby agrees that the Authority is entering into this Agreement solely for the purpose of assisting the Property Owner with the financing of the installation of the Improvements, and that the Authority nor the County have no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Improvements. Based upon the foregoing, the Property Owner hereby waives the right to recover from and fully and irrevocably releases the Authority and the County and any and all agents, employees, attorneys, representatives and successors and assigns of the Authority from any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), relating to the subject matter of this Agreement that the Property Owner may now have or hereafter acquire against the Authority or County and any and all agents, employees, attorneys, representatives and successors and assigns of the Authority or County.

To the extent that the foregoing waivers and agreements are subject to Section 1542 of the California Civil Code or similar provisions of other applicable law, it is the intention of the Property Owner that the foregoing waivers and agreements will be effective as a bar to any and all losses, liabilities, claims, damages (including consequential damages), penalties,

finances, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), of whatever character, nature and kind, known or unknown, suspected or unsuspected, and Property Owner agrees to waive any and all rights and benefits conferred upon the Property Owner by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law. Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The waivers, releases and agreements set forth herein shall survive termination of this Agreement.

Indemnification. The Property Owner agrees to indemnify, defend, protect, and hold harmless the Authority and the County and any and all agents, employees, attorneys, representatives and successors and assigns of the Authority and the County, from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, (i) the Assessment, (ii) the financing by the Authority of the Improvements, (iii) the Improvements, (iv) or any other fact, circumstance or event related to the subject matter of this Agreement, regardless of whether such losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) accrue before or after the date of this Agreement.

The provisions of this Section shall survive the termination of this Agreement.

**Program Management Agreement  
For the Establishment and Operation of a PACE Program**

**Between  
County of Placer  
and  
Sierra Valley Energy Authority**

This Administration Agreement (the "Agreement") for the Establishment and Operation of a PACE Program is made and entered into as of this \_\_\_\_ day of \_\_\_\_, 2016, by and between the County of Placer ("Placer County") and Sierra Valley Energy Authority (the "Authority").

**WHEREAS**, Placer County is a county duly formed under the laws of the State of California, and has full legal right, power and authority to enter into this Agreement and related documents and to take the actions contemplated to be taken by Placer County by this Agreement.

**WHEREAS**, the Authority is a joint exercise of powers authority duly formed under a Joint Exercise of Powers Agreement for the Establishment of the Sierra Valley Energy Authority effective September 9, 2015 (the "JPA Agreement"), between the County and the City of Colfax, and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 (the "Act"), and the Authority has full legal right, power and authority to enter into this Agreement and related documents and to take the actions contemplated be taken by the Authority by this Agreement.

**WHEREAS**, the Authority wishes to establish a Property Assessed Clean Energy program (the "Authority Program"), pursuant to Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (the "Act") for the purpose of financing and refinancing the acquisition, installation and improvement of the improvements authorized under the Act (the "PACE Improvements").

**WHEREAS**, Placer County has established the mPOWER Program (the "mPOWER Program") under the Act and, because of Placer County's experience with operating the mPOWER Program, the Authority would like Placer County to administer the Authority Program.

**1. Responsibilities of the Authority**

(a) The Authority will adopt such resolutions and ordinances and undertake such other proceedings necessary to establish the Authority Program and authorize the issuance of bonds or other debt (collectively, "bonds") for the Authority Program for the purpose of financing and refinancing PACE Improvements.

(b) The boundaries of the Authority Program will initially include the territory in the County of Placer, the City of Folsom and the County of Nevada. The Authority will allow other cities and counties from time to time to participate in the Authority Program.

(c) As necessary to accomplish the purposes of the Authority Program, the Authority will issue bonds and other debt to finance and refinance PACE Improvements. The bonds will be limited obligations of the Authority, payable only from contractual assessments levied on participating parcels.

(d) In connection with the issuance of such bonds or other debt payable from contractual assessments, the Authority will obligate itself, through a covenant with the owners of the bonds and other debt, to undertake judicial foreclosure with respect to delinquent contractual assessment installments under specified circumstances.

(e) The Authority will undertake a judicial validation action to secure a superior court judgment as to the validity of the Authority Program, the contractual assessments levied by the Authority and any bonds or debt issued by the Authority for the Authority Program.

(f) The Authority will ensure that the General Counsel of the Authority and Secretary of the Authority provide such assistance as is reasonably required by Placer County. The Authority will cooperate with and engage a public finance attorney identified by Placer County with expertise in the establishment and operation of similar financing districts for the purpose of financing PACE Improvements that is reasonably acceptable to Authority (the "Bond Attorney"); provided, however, that the compensation of such Bond Attorney related to formation of the Authority Program, judicial validation and establishment of the Authority Program shall be paid by Placer County and the compensation of such Bond Attorney related to the issuance of bonds and other debt shall be paid from the proceeds of any such bonds.

(g) The Authority has reviewed the Program Report prepared by Placer County for the Authority Program that outlines the policies, initial list of eligible improvements, criteria for financing/refinancing eligibility, administration and financing of the Authority Program and has had the opportunity to provide comments and suggestions to Placer County. The Program Report constitutes the report required by Section 5898.22 of the Act.

(h) The Authority will determine the eligible PACE Improvements in consultation with Placer County, the Bond Attorney, utility company representatives and other pertinent parties. If at any time the Authority wishes to modify the list of PACE Improvements, the Authority will so notify Placer County in writing of the requested modifications. The County will respond to such request for modification within 60 days by indicating the steps and conditions necessary if any to implement such modifications. Placer County will accommodate all reasonable requests, and subject to agreement by Placer County and the Authority on the payment of related costs.

(i) The Authority hereby authorizes Placer County to provide the scope of services described in "Responsibilities of Placer County" below.

## **2. Responsibilities of Placer County**

Placer County shall make the Authority Program available to property owners within the jurisdiction of the members of the Authority, including its Associate Members, subject to the terms and conditions described in the Program Report, including but not limited to the following:

(a) Placer County will develop all Authority Program documentation, including marketing material and application documents.

(b) Placer County will provide the Authority with a summary of the required procedures for the Authority to establish the Authority Program and authorize the issuance of bonds and with final drafts of all related resolutions, ordinances and other proceedings.

(c) Placer County will review and process on behalf of the Authority all applications by property owners to finance or refinance PACE Improvements and will only approve those applications that comply with the criteria identified in the Program Report, unless the Authority has otherwise agreed.

(d) Placer County will propose a process by which Placer County will notify the Authority of an approved application and the need for financing.

(e) Placer County will provide the Authority with all required documentation related to bonds and other debt to be issued by the Authority with respect to the Authority Program, and will supervise on behalf of Authority such consultant services as may be necessary, including the services of the Bond Attorney, a financial advisor and an assessment engineer identified by the County.

(f) Placer County will prepare and submit on behalf of the Authority the annual levy of contractual assessment installments related to the Authority Program to the appropriate representatives of the various counties. The contractual assessment installments shall be collected in the same manner and at the same time as the general taxes of the Authority on the real property tax bills issued by the applicable county on real property and are payable and shall be subject to the same penalties, remedies and lien priorities in the event of delinquency and default, except as otherwise permitted by the Act.

(g) Placer County shall administer on behalf of the Authority any collection actions required to be taken by the Authority related to the Authority Program and will be responsible for supervising any attorney required to prosecute a judicial foreclosure of delinquent contractual assessment installments. Placer County will retain all penalties and interest received as a result of the collection of delinquent contractual assessment installments, unless the Authority has pledged such agreements in related financing documentation. Unless otherwise agreed by the parties, Placer County shall pursue collection actions on behalf of the Authority in a manner consistent with relevant covenants by the Authority under financing documentation for the Authority Program.

(h) Placer County will provide periodic reports to the Authority regarding the number of applications received, the financing agreement requested in such applications, and the number and type of improvements financed.

**3. Compensation.**

(i) Financing and Administration. The parties agree that the Authority shall not provide any direct compensation to the County for administration of the Program. Program revenues derived from processing fees, origination fees, program fees, fees collected to offset fees required by public agencies or vendors and revenues derived from interest on assessments shall be deemed Program revenues for the purpose of cost recovery and administrative compensation and shall be considered revenue and compensation of the County.

The compensation payable to Placer County under this Section 3(i) will be paid from bond proceeds, application processing fees and administrative fees charged to applicants (including an annual administrative fee collected as a portion of the contractual assessment installments) and other Authority Program revenues.

(ii) Environmental Credits and Benefits. The parties hereby agree that any credits or other environmental benefits attributable to the PACE Improvements financed by the Authority Program will be allocated to the County and shall be subject to disposition based upon Cooperative Agreements with individual members of the Authority.

**4. Recitals.**

The above recitals are true and correct.

**5. Communication; Designated Representatives.**

The persons identified below as the Designated Representative shall, upon execution of this Agreement, have authority to grant discretionary approvals identified in this Agreement. Except as otherwise specifically provided in this Agreement, any notice, submittal, or communication required or permitted to be served on a party, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

**County**

Phone: (530) 889-4140  
Fax: (530) 889-4100  
Email: [energyinfo@placer.ca.gov](mailto:energyinfo@placer.ca.gov)  
Designated Representative: Eric Waidmann

**Authority**

Executive Director: \_\_\_\_\_

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Designated Representative: \_\_\_\_\_

**6. Additional Requirements.**

(i) Authority to Amend Agreement: Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by the Designated Representative of each party or such other representative as is authorized by the governing body of each party.

(ii) No Waiver of Breach: The waiver by any party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any later breach of the same or any other term or promise contained in this Agreement.

(iii) Construction: To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. Placer County and the Authority covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

(iv) Making of Agreement: Placer County and the Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement; the language of the Agreement will not be construed against one party in favor of the other. Placer County and the Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

(v) No Third-Party Beneficiaries: Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

(vi) Applicable Law and Forum: This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Placer.

(vii) Captions: The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

(viii) Merger: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and

exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. This Agreement is the entire agreement between the Parties. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by all parties.

(ix) Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

**7. Effective Date.**

This Agreement shall become effective on the date first written above.

**8. Termination.**

Either Placer County or the Authority may terminate its participation in this Agreement by giving one hundred eighty (180) days advance written notice to all other parties of its intent to terminate its participation in this Agreement. Termination shall not affect the validity of any financing previously provided by the Authority. Placer County will use commercially reasonable efforts to cooperate with transition of administration of the Authority Program to the successor administrator.

**9. Counterpart Signatures.**

This Agreement may be executed in counterpart and each of these executed counterparts shall have the same force and effect as an original instrument and as if all of the parties to the aggregate counterparts had signed the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

**SIERRA VALLEY ENERGY  
AUTHORITY**

**COUNTY OF PLACER**

By: \_\_\_\_\_  
Executive Director

By: \_\_\_\_\_

Authorized by Resolution  
No: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of the Authority

Approved as to form:

Approved as to form:

\_\_\_\_\_  
General Counsel

\_\_\_\_\_  
County Counsel

## AGREEMENT FOR LEGAL SERVICES

### AMONG THE COUNTY OF PLACER, THE SIERRA VALLEY ENERGY AUTHORITY AND JONES HALL, A PROFESSIONAL LAW CORPORATION, FOR BOND COUNSEL SERVICES IN CONNECTION WITH A PROPERTY ASSESSED CLEAN ENERGY PROGRAM

This AGREEMENT FOR LEGAL SERVICES is entered into this \_\_\_ day of \_\_\_, 2016, between the COUNTY OF PLACER (the "County"), the Sierra Valley Energy Authority (the "Authority"; together with the County, "Client") and JONES HALL, A PROFESSIONAL LAW CORPORATION, San Francisco, California ("Attorneys" or "Consultant").

#### BACKGROUND:

1. The Authority wishes to pursue a Property Assessed Clean Energy ("PACE") program (the "SVEA PACE Program") to provide financing and refinancing of PACE improvements in the territory of its members, including its associate members. The County will administer the SVEA PACE Program for the Authority.

2. The Authority and the County wish to retain nationally recognized bond counsel with PACE expertise to assist with the SVEA PACE Program, including (a) formation of the Authority, (b) formation of a regional PACE program and (c) issuance of bonds and other debt.

#### AGREEMENT:

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Client and Attorneys agree as follows:

Section 1. Attorney-Client Relationship. Upon execution of this Agreement, the Client will be Attorney's client and an attorney-client relationship will exist between Client and Attorneys. Attorneys assume that all other parties will retain such counsel, as they deem necessary and appropriate to represent their interests in this transaction. Attorneys further assume that all other parties understand that in this transaction Attorneys represent only the Client, Attorneys are not counsel to any other party, and Attorneys are not acting as an intermediary among the parties. Attorneys' services as bond counsel are limited to those contracted for in this Agreement; the Client's execution of this Agreement will constitute an acknowledgment of those limitations. Attorneys' representation of the Client will not affect, however, our responsibility to render an objective approving opinion with respect to any bonds.

Section 2. Scope of Engagement. Attorneys shall perform all of the following services as bond counsel in connection with the Client's PACE initiatives:

- a. Consult and cooperate with Client and Client staff to assist in the formulation of a coordinated financial and legal PACE financing program.
- b. Preparation of all legal documentation for formation of the Authority.

- c. Preparation of all documentation for formation of the SVEA mPOWER Program.
- d. Assist County Counsel with a judicial validation proceeding for the SVEA mPOWER Program, including drafting all pleadings.
- e. Such other and further services as are normally performed by bond counsel in connection with similar financings.

**Section 3. Conflicts: Prospective Consent.**

(a) Attorneys represent many political subdivisions, investment banking firms and financial advisory firms, including Bank of America. It is possible that during the time that Attorneys are representing the Client, one or more of Attorneys present or future clients will have transactions with the Client. It is also possible that Attorneys may be asked to represent, in an unrelated matter, one or more of the entities involved in the financing or refinancing of PACE improvements through the County's PACE initiatives. Attorneys do not believe such representation, if it occurs, will adversely affect Attorneys' ability to represent you as provided in this Agreement, either because such matters will be sufficiently different from the financing or refinancing of PACE improvements through the County's PACE initiatives so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the financing or refinancing of PACE improvements through the County's PACE initiatives. Execution of this Agreement will signify the Client's consent to Attorneys' representation of others consistent with the circumstances described in this paragraph.

(b) In accordance with Rule 3-310(C) of the California Rules of Professional Conduct, execution of this Agreement by the County and the Authority constitutes their informed written consent to Attorneys' concurrent representation of the County and the Authority. The interests of the County are potentially adverse to the interests of the Authority in ways that the parties have discussed.

By executing this Agreement, each of the County and the Authority represents that it understands the potential consequences of agreeing to waive any conflicts of interest between the Authority and the County. California Rule of Professional Conduct 3 310(C) provides in relevant part as follows:

- (C) A member shall not, without the informed written consent of each client:
- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
  - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
  - (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

Rule 3-310(E) also provides:

A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where,

by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

This Agreement sets forth the conditions of Attorneys' representation of the Authority and the County and execution of this Agreement by the Authority and the County constitutes the written consent of the Authority and the County to waive any and all actual and/or potential conflicts of interest in Attorneys' proposed representation of the Authority and the County. Attorneys hereby agree that they will not represent either the County or the Authority in an action or claim against the other.

Each of the County and the Authority is free to terminate Attorneys as its counsel at any time, with or without any cause, as set forth in Section 8, with respect to the matters covered in this Agreement and to obtain substitute counsel. However, to protect the rights of the other who may not desire to have to obtain substitute counsel, each of the County and the Authority agrees to waive and relinquish any right that it may have to object to the Attorneys' continuing representation of the other, despite an actual conflict between the interests of the County and the Authority.

By waiving any conflicts of interest and acknowledging future joint representation, each of the County and the Authority acknowledges and agrees that any confidential communications with respect to these matters it have made or may make in the future to the Attorneys may be shared with the other, even if it elects to terminate the Attorneys as its counsel. However, the privilege against disclosure of attorney-client communications will continue to exist with reference to any third parties, or other non-parties. Thus, communications between either of the Authority or the County and the Attorneys remain privileged from disclosure to third parties so long as they meet the other requirements for privileged attorney-client communications.

By executing this Agreement, each of the County and the Authority agrees that this waiver will be valid between the Attorneys and each of the Authority and the County.

Section 4. Compensation. For the bond counsel services of Attorneys, the Client will pay Attorneys a fee for the Bonds equal to the sum of the following:

(a) Formation of the Sierra Valley Energy Authority: Client will pay Attorneys a non-contingent fee, based on the following hourly rates:

Chris Lynch: \$400  
Josh Anzel: \$350  
Other Associate Attorneys: \$300

This fee will be payable within 30 days after Attorneys submit an invoice to Client.

(b) Formation of the SVEA mPOWER Program (including judicial validation): Client will pay Attorneys a non-contingent fee, based on the following hourly rates:

Chris Lynch: \$300  
Josh Anzel: \$250  
Other Associate Attorneys: \$200

This fee will be payable within 30 days after Attorneys submit an invoice to Client.

(c) Assistance with the SVEA mPOWER Program other than take-out transactions: After a judgment has been entered in the judgment validation action, Client will pay Attorneys for their assistance with the SVEA mPOWER Program a contingent fee equal to 0.33% of the principal amount of each assessment. This fee will be payable at the time of each initial financing.

(d) Future take-out transactions for SVEA mPOWER Program: Client will pay Attorneys a fee contingent upon the successful completion of the financings as follows:

- 1% of the first \$1,000,000
- 0.5% of the next \$5,000,000
- 0.25% of the next \$15,000,000
- 0.125% of the next \$15,000,000

This fee, will be payable within 30 days after each financing.

In addition, the Client shall pay to Attorneys all direct out-of-pocket expenses for travel outside the State of California (if any), messenger and delivery service, photocopying, closing costs, legal publication expenses and other costs and expenses incurred by Attorneys in connection with their services hereunder.

(e) Maximum Compensation. In no event shall the total compensation under this Agreement exceed \$217,000.

(f) Timing for Payment of Contingent Compensation. *Payment of any fees and expenses that are contingent upon the completion of a financing by the Client will be due upon completion of the financing and any such fee is not set by law but is negotiable between Attorneys and Client, as specified herein.*

#### Section 5. Responsibilities of the Client.

(a) General. The Client will cooperate with Attorneys and furnish Attorneys with certified copies of all proceedings taken by the Client, or otherwise deemed necessary by Attorneys to render an opinion upon the validity of the proceedings. During the course of this engagement, Attorneys will rely on Client to provide Attorneys with complete and timely information on all developments pertaining to any aspect of the PACE initiatives described above. Attorneys are not responsible for costs and expenses incurred incidental to the actual issuance and delivery of the County's PACE initiatives, including the cost of preparing certified copies of proceedings required by Attorneys in connection with a financing, and printing and publication costs.

(b) Federal Tax Law-Related Responsibilities. Client and Attorneys do not expect this program to require any federal tax law advice, and will enter into an amendment of this agreement if any such advice is required.

Section 6. Independent Contractor. Attorneys will act as an independent contractor in performing the services required under this Agreement, and under no circumstances shall Attorneys be considered an agent, partner, or employee of the Client.

Section 7. Assignment. Attorneys may not assign their rights or delegate their obligations under this Agreement, in whole or in part, except with the prior written consent of the Client.

Section 8. Termination of Agreement.

(a) Termination by Client. This Agreement may be terminated at any time by the Client with or without cause upon written notice to Attorneys.

(b) Termination by Attorneys. This Agreement may be terminated by Attorneys upon 15 days' written notice to Client if Client fails to follow written legal advice given by Attorneys.

(c) Termination Upon Completion of Engagement. This Agreement shall terminate upon the completion of the engagement described in this Agreement.

(d) Consequences of Termination. In the event of termination, all finished and unfinished documents shall at the option of the Client become its property and shall be delivered to the Client by Attorneys.

Section 9. Indemnification; Insurance. At all times during the term of this Agreement, Attorneys shall comply with the indemnification and insurance provisions set forth in the attached Exhibit A.

IN WITNESS WHEREOF, the Client and Attorneys have executed this Agreement as of the date first above written.

**COUNTY OF PLACER**

---

County Executive Officer

**COUNTY OF PLACER**

Approved as to form:

---

County Counsel

**SIERRA VALLEY ENERGY AUTHORITY**

---

Executive Director

**JONES HALL, A PROFESSIONAL LAW  
CORPORATION**

---

Christopher K. Lynch  
Vice President

## EXHIBIT A

### HOLD HARMLESS AGREEMENT AND INSURANCE REQUIREMENTS

#### 1. HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

Consultant is skilled in the professional calling necessary to the services and duties agreed to be performed and Client relies upon the skills and knowledge of Consultant. Consultant shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant agrees to indemnify and hold harmless the Client and its officers, agents and employees, from and against any and all liability, losses, damages, costs and expenses resulting from any professional malpractice of Consultant, its officers, employees, agents or subcontractors determined by a court of law to have occurred in the performance of services under this Agreement.

As used above, the term CLIENT means Placer County, the Sierra Valley Energy Authority or their officers, agents, employees, and volunteers.

#### 2. INSURANCE:

CONSULTANT shall file with CLIENT concurrently herewith a Certificate of Insurance, in companies acceptable to CLIENT, with a Best's Rating of no less than A:VII showing.

#### 3. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to CONSULTANT'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the County of Placer and Sierra Valley Energy Authority."

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the Client upon demand.

#### 4. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONSULTANT, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by CONSULTANT in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If CONSULTANT carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

→One million dollars (\$1,000,000) each occurrence

→Two million dollars (\$2,000,000) aggregate

D. If CONSULTANT carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

→One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

→One million dollars (\$1,000,000) for Products-Completed Operations

→Two million dollars (\$2,000,000) General Aggregate

(2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

CONSULTANT shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of CLIENT, which consent, if given, shall be subject to the following conditions:

(1) The limits of liability shall not be less than:

→One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

→One million dollars (\$1,000,000) aggregate for Products Completed Operations

→Two million dollars (\$2,000,000) General Aggregate

- (2) The insurance coverage provided by CONSULTANT shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

5. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, Sierra Valley Energy Authority, their officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer and Sierra Valley Energy Authority with respect to any insurance or self-insurance programs maintained by the County of Placer or the Sierra Valley Energy Authority and no insurance held or owned by the County of Placer or Sierra Valley Energy Authority shall be called upon to contribute to a loss."
- C. "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County of Placer."

6. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

7. PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate (\$250,000 deductible).

If Consultant sub-contracts in support of Consultants work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the sub contractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

The insurance coverage provided by the consultant shall contain language providing coverage up to six (6) months following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.